

## Internal Revenue Service

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### Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Distributing =

Controlled =

Controlled 2 =

Business A =

Business B =

a =

b =

c =

Dear :

This letter responds to your February 5, 2010 request for rulings as to the federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The information received in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations

submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether either Distribution 1 or Distribution 4 (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Parent is engaged, through direct and indirect subsidiaries, in Business A and Business B. Parent wholly owns each of Sub 1, Sub 2, and Controlled 2, all of which are domestic corporations. Parent also wholly owns Sub 3, a disregarded entity for U.S. federal tax purposes. Sub 1 wholly owns Sub 6, a domestic corporation. Sub 3 wholly owns each of Sub 4 and Sub 5, both of which are disregarded entities for U.S. federal tax purposes. Sub 4 and Sub 5 own a percent and b percent, respectively, of the issued and outstanding equity interests of Distributing, a domestic corporation. Distributing wholly owns each of Sub 7 and Sub 8, both of which are domestic corporations. Distributing also wholly owns Sub 9, a disregarded entity for U.S. federal tax purposes. Sub 8 wholly owns Sub 10, a disregarded entity for U.S. federal tax purposes.

Each of Controlled 2, Sub 1, Sub 6, Sub 7, and Sub 8, directly or indirectly, hold assets used in Business B. Financial information has been submitted indicating that Business A and Business B each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distribution 4 (as defined below) will be undertaken for the following corporate business purposes: (i) to enhance Controlled 2's ability to retain and attract key personnel, and (ii) to enhance Controlled 2's ability to raise capital by independently accessing the capital markets. The remaining portion of the Proposed Transaction will be undertaken for the corporate business purpose of facilitating Distribution 4.

Following the Proposed Transaction, Parent and Controlled 2 will enter into agreements for transitional services (the “Transition Services Agreement”), ongoing business services, sublease of certain real property (the “Sublease Agreements”), and certain employee matters. In addition, Parent will agree to guarantee an obligation of

Sub 6.

### **The Proposed Transaction**

Taxpayer has proposed the following Proposed Transaction:

- (i) Sub 7 will convert from a Delaware corporation to a Delaware limited liability company (the “Sub 7 Conversion”).
- (ii) Sub 8 will convert from a Delaware corporation to a Delaware limited liability company (the “Sub 8 Conversion”).
- (iii) Sub 7 and Sub 8 will distribute the assets and transfer the employees of Business B to Distributing (the “Sub 7 Distribution” and the “Sub 8 Distribution,” respectively).
- (iv) Distributing will form Controlled, and transfer 100 percent of the issued and outstanding shares of each of Sub 9 and Sub 10 and the assets and employees of Business B to Controlled (“Contribution 1”).
- (v) Distributing will distribute all of the issued and outstanding shares of Controlled to Sub 4 and Sub 5 (“Distribution 1”).
- (vi) Each of Sub 4 and Sub 5 will distribute a percent and b percent, respectively, of the issued and outstanding shares of Controlled to Sub 3 (“Distribution 2”).
- (vii) Sub 3 will distribute all of the issued and outstanding shares of Controlled to Parent (“Distribution 3”).
- (viii) Sub 1 will merge into Controlled 2 pursuant to applicable state law (the “Sub 1 Merger”).
- (ix) Controlled will merge into Controlled 2 pursuant to applicable state law (the “Controlled Merger”).
- (x) Parent will contribute approximately \$c in cash to Controlled 2 solely in exchange for additional Controlled 2 stock (“Contribution 2”).
- (xi) Parent will distribute all of the issued and outstanding shares of Controlled 2 to Parent's shareholders (“Distribution 4”).

### **Representations**

#### **The Sub 7 Conversion**

The following representations have been made regarding the Sub 7 Conversion:

- (a) The fair market value of the Distributing voting stock deemed received by Distributing in the Sub 7 Conversion will be approximately equal to the fair market value of the Sub 7 stock deemed surrendered in the exchange.
- (b) No property, other than the deemed shares of Distributing voting stock, will be issued by Distributing to Sub 7 as consideration with respect to the Sub 7 Conversion.
- (c) In cancellation of its Sub 7 stock, Distributing will acquire a direct interest in the Sub 7 business enterprise for U.S. federal tax purposes.
- (d) For federal tax purposes, Distributing will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 7 immediately prior to the Sub 7 Conversion. For purposes of this representation, amounts paid by Sub 7 to dissenters, amounts used by Sub 7 to pay its reorganization expenses, amounts paid by Sub 7 to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Sub 7 immediately preceding the transfer will be included as assets of Sub 7 held immediately prior to the transaction.
- (e) Except as set forth in the Proposed Transaction, Distributing has no plan or intention to sell or otherwise dispose of any of the assets of Sub 7 acquired in the Sub 7 Conversion, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).
- (f) The liabilities of Sub 7 deemed to be assumed (as determined under § 357(d)) by Distributing were incurred by Sub 7 in the ordinary course of its business.
- (g) Following the Sub 7 Conversion, Distributing either directly or through one or more members of Distributing's qualified group (within the meaning of § 1.368-1(d)(4)(ii)) will continue the historic business of Sub 7 or use a significant portion of Sub 7's historic business assets in a business.
- (h) Distributing and Sub 7 will pay their respective expenses, if any, incurred in connection with the Sub 7 Conversion.
- (i) Other than obligations arising in the ordinary course of business, there will be no intercorporate indebtedness existing between Distributing and Sub 7 that was issued, acquired, or will be settled at a discount.
- (j) No party to the Sub 7 Conversion will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

- (k) The fair market value of the assets of Sub 7 deemed transferred to Distributing will equal or exceed the sum of the liabilities deemed assumed by Distributing, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (l) Sub 7 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (m) In connection with the Sub 7 Conversion, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

#### The Sub 8 Conversion

The following representations have been made regarding the Sub 7 Conversion:

- (n) The fair market value of the Distributing voting stock deemed received by Distributing in the Sub 8 Conversion will be approximately equal to the fair market value of the Sub 8 stock deemed surrendered in the exchange.
- (o) No property, other than the deemed shares of Distributing voting stock, will be issued by Distributing to Sub 8 as consideration with respect to the Sub 8 Conversion.
- (p) In cancellation of its Sub 8 stock, Distributing will acquire a direct interest in the Sub 8 business enterprise for U.S. federal tax purposes.
- (q) For federal tax purposes, Distributing will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 8 immediately prior to the transaction. For purposes of this representation, amounts paid by Sub 8 to dissenters, amounts used by Sub 8 to pay its reorganization expenses, amounts paid by Sub 8 to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Sub 8 immediately preceding the transfer will be included as assets of Sub 8 held immediately prior to the Sub 8 Conversion.
- (r) Except as set forth in the Proposed Transaction, Distributing has no plan or intention to sell or otherwise dispose of any of the assets of Sub 8 deemed acquired in the Sub 8 Conversion, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).
- (s) The liabilities of Sub 8 deemed assumed (as determined under § 357(d)) by Distributing were incurred by Sub 8 in the ordinary course of its business.
- (t) Following the Sub 8 Conversion, Distributing either directly or through one or more

members of Distributing's qualified group (within the meaning of § 1.368-1(d)(4)(ii)) will continue the historic business of Sub 8 or use a significant portion of Sub 8's historic business assets in a business.

- (u) Distributing and Sub 8 will pay their respective expenses, if any, incurred in connection with the Sub 8 Conversion.
- (v) Other than obligations arising in the ordinary course of business, there will be no intercorporate indebtedness existing between Distributing and Sub 8 that was issued, acquired, or will be settled at a discount.
- (w) No party to the Sub 8 Conversion will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (x) The fair market value of the assets of Sub 8 deemed transferred to Distributing will equal or exceed the sum of the liabilities deemed assumed by Distributing, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (y) Sub 8 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (z) In connection with the Sub 8 Conversion, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

#### Contribution 1 and Distribution 1

The following representations have been made regarding Contribution 1 and Distribution 1:

- (aa) The indebtedness, if any, owed by Controlled to Distributing after Distribution 1 will not constitute stock or securities.
- (bb) No part of the consideration to be distributed by Distributing in Distribution 1 will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (cc) The five years of financial information submitted for the Business A operations conducted directly by Distributing is representative of the present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- (dd) The five years of financial information submitted for Business B is representative of the present operations and there have been no substantial operational changes

since the date of the last financial statements submitted.

- (ee) Following Distribution 1, no person will hold a greater than 50 percent interest in either Distributing or Controlled (within the meaning of § 355(g)) who did not hold such an interest immediately before Distribution 1.
- (ff) Following Distribution 1, Distributing, through its separate affiliated group, will continue the active conduct of Business A, independently and with its separate employees.
- (gg) Following Distribution 1, Controlled, through its separate affiliated group, will continue the active conduct of Business B, independently and with its separate employees.
- (hh) Contribution 1 and Distribution 1 are being carried out for the corporate business purpose of facilitating Distribution 4. The distribution of the stock, or stock and securities, of the controlled corporation is motivated, in whole or substantial part, by this corporate business purpose.
- (ii) Distribution 1 is not used principally as a device for distributing the earnings and profits of Distributing or Controlled or both.
- (jj) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.
- (kk) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.
- (ll) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, Distribution 1.
- (mm) Except as set forth in the Transition Services Agreement and the Sublease Agreements, payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.



- (nn) No party to Distribution 1 will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (oo) Distributing and Controlled each will pay its or their own expenses, if any, incurred in connection with Contribution 1 and Distribution 1.
- (pp) The Contribution and Distribution 1 are being undertaken pursuant to a plan of reorganization.
- (qq) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor to any such corporation).
- (rr) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following Distribution 1.
- (ss) Neither Business B nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business B. Following Distribution 1, the Controlled SAG will be the principal owner of the goodwill and significant assets of Business B.
- (tt) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to Controlled will be included in income immediately before Distribution 1 (See § 1.1502-19).
- (uu) The total adjusted basis and the fair market value of the assets to be transferred to Controlled by Distributing will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject. The liabilities assumed, if any, (as determined under § 357(d)) by Controlled were incurred in the ordinary course of business and

were associated with the assets transferred.

### The Sub 1 Merger

The following representations have been made regarding the Sub 1 Merger:

- (vv) The Sub 1 Merger will be effected pursuant to state law, under which, as a result of the operation of such laws, the following events will occur simultaneously at the effective time of the Sub 1 Merger: (i) all of the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Sub 1 will become the assets and liabilities of Controlled 2; and (ii) Sub 1 will cease its separate legal existence for all purposes.
- (ww) All of the proprietary interest in Sub 1 will be preserved (within the meaning of § 1.368-1(e)).
- (xx) Except as set forth in the Proposed Transaction, Controlled 2 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 1 acquired in the Sub 1 Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).
- (yy) The liabilities of Sub 1 assumed by Controlled 2 and the liabilities to which the transferred assets of Sub 1 were subject, were incurred by Sub 1 in the ordinary course of its business.
- (zz) Following the Sub 1 Merger, Controlled 2 will continue the historic business of Sub 1, or use a significant portion of such historic business assets in an active trade or business.
- (aaa) Controlled 2 and Sub 1 will pay their respective expenses, if any, incurred in connection with the Sub 1 Merger.
- (bbb) There is no intercorporate indebtedness existing between Sub 1 and Controlled 2 that was issued, acquired, or will be settled at a discount.
- (ccc) No party to the Sub 1 Merger will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (ddd) Sub 1 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (eee) The fair market value of the assets of Sub 1 transferred to Controlled 2 will equal or equal or exceed the sum of the liabilities assumed by Controlled 2, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (fff) The fair market value of Controlled 2's assets will exceed the amount of the

liabilities of Controlled 2 immediately after the transaction.

### The Controlled Merger

The following representations have been made regarding the Controlled Merger:

- (ggg) The Controlled Merger will be effected pursuant to state law, under which, as a result of the operation of such laws, the following events will occur simultaneously at the effective time of the Controlled Merger: (i) all of the assets and liabilities (except to the extent satisfied or discharged in the transaction) of Controlled will become the assets and liabilities of Controlled 2; and (ii) Controlled will cease its separate legal existence for all purposes.
- (hhh) All of the proprietary interest in Controlled will be preserved (within the meaning of § 1.368-1(e)).
- (iii) Except as set forth in the Proposed Transaction, Controlled 2 has no plan or intention to sell or otherwise dispose of any of the assets of Controlled acquired in the Controlled Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).
- (jjj) The liabilities of Controlled assumed by Controlled 2 and the liabilities to which the transferred assets of Controlled were subject, were incurred by Controlled in the ordinary course of its business.
- (kkk) Following the Controlled Merger, Controlled 2 will continue the historic business of Controlled, or use a significant portion of such historic business assets in an active trade or business.
- (lll) Controlled 2 and Controlled will pay their respective expenses, if any, incurred in connection with the Controlled Merger.
- (mmm) There is no intercorporate indebtedness existing between Controlled and Controlled 2 that was issued, acquired, or will be settled at a discount.
- (nnn) No party to the Controlled Merger will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (ooo) Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (ppp) The fair market value of the assets of Controlled transferred to Controlled 2 will equal or exceed the sum of the liabilities assumed by Controlled 2, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (qqq) The fair market value of Controlled 2's assets will exceed the amount of the

liabilities of Controlled 2 immediately after the transaction.

Contribution 2 and Distribution 4

The following representations have been made regarding Contribution 2 and Distribution 4:

- (rrr) The indebtedness, if any, owed by Controlled 2 to Parent after Distribution 4 will not constitute stock or securities.
- (sss) No part of the consideration to be distributed by Parent in Distribution 4 will be received by the Parent shareholders as creditors, employees, or in any capacity other than that of shareholders of Parent.
- (ttt) The five years of financial information submitted for the Business A operations conducted by Parent, through its direct and indirect subsidiaries, is representative of the present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- (uuu) The five years of financial information submitted for Business B is representative of the present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- (vvv) Following Distribution 4, no person will hold a greater than 50 percent interest in either Parent or Controlled 2 (within the meaning of § 355(g)) who did not hold such an interest immediately before Distribution 4.
- (www) Following Distribution 4, Parent, through its separate affiliated group, will continue the active conduct of Business A, independently and with its separate employees.
- (xxx) Following Distribution 4, Controlled 2, through its separate affiliated group, will continue the active conduct of Business B, independently and with its separate employees.
- (yyy) Distribution 4 will be carried out for the following corporate business purposes: (i) to enhance Controlled 2's ability to retain and attract key personnel and (ii) to enhance Controlled 2's ability to raise capital by independently accessing the capital markets. The distribution of the stock, or stock and securities, of the controlled corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (zzz) Distribution 4 is not used principally as a device for distributing the earnings and profits of Parent or Controlled 2 or both.
- (aaaa) For purposes of § 355(d), immediately after Distribution 4, no person (determined

after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Parent stock entitled to vote or 50 percent or more of the total value of shares of all classes of Parent stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of Distribution 4.

- (bbbb) For purposes of § 355(d), immediately after Distribution 4, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the date of Distribution 4.
- (cccc) No intercorporate debt will exist between Parent and Controlled 2 at the time of, or subsequent to, Distribution 4.
- (dddd) Except as set forth in the Transition Services Agreement and the Sublease Agreements, payments made in connection with all continuing transactions between Parent and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (eeee) Neither Parent nor Controlled 2 is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (ffff) Parent and Controlled 2 each will pay its or their own expenses, if any, incurred in connection with Contribution 2 and Distribution 4.
- (gggg) Distribution 4 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Parent or Controlled 2 (including any predecessor or successor to any such corporation).
- (hhhh) Neither Business A nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 4 in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 4, the Parent SAG will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following Distribution 4.
- (iiii) Neither Business B nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of Distribution 4 in a

transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of Distribution 4, the Parent SAG will have been the principal owner of the goodwill and significant assets of Business B. Following Distribution 4, the Controlled 2 SAG will be the principal owner of the goodwill and significant assets of Business B.

- (jjjj) Immediately before Distribution 4, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Parent's excess loss account, if any, with respect to Controlled 2 will be included in income immediately before Distribution 4 (See § 1.1502-19).
- (kkkk) The total adjusted basis and the fair market value of the assets to be transferred to Controlled 2 by Parent will equal or exceed the sum of the liabilities assumed (as determined under § 357(d)) by Controlled 2 plus any liabilities to which the transferred assets are subject. The liabilities assumed, if any, (as determined under § 357(d)) by Controlled 2 were incurred in the ordinary course of business and were associated with the assets transferred.

### **Rulings**

Based solely on the information provided and the representations made, we rule as follows with respect to the Proposed Transaction:

#### **The Sub 7 Conversion**

- (1) The deemed transfer by Sub 7 of substantially all of its assets to Distributing solely in exchange for Distributing voting stock and the assumption of the liabilities of Sub 7, followed by the distribution by Sub 7 of the Distributing voting stock to Distributing in complete liquidation, will qualify as a reorganization under § 368(a)(1)(C). Sub 7 and Distributing will each be a "party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Sub 7 on the deemed transfer of substantially all of its assets to Distributing solely in exchange for shares of Distributing voting stock and the deemed assumption by Distributing of the liabilities of Sub 7 (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Sub 7 on the deemed distribution of Distributing voting stock to Distributing (§ 361(c)).
- (4) No gain or loss will be recognized by Distributing upon the deemed receipt of the

assets of Sub 7 solely in exchange for Distributing voting stock (§ 1032(a)).

- (5) The basis of the assets of Sub 7 in the hands of Distributing will be the same as the basis of those assets in the hands of Sub 7 immediately prior to the Sub 7 Conversion (§ 362(b)).
- (6) The holding period of the assets of Sub 7 in the hands of Distributing will include the period during which those assets were held by Sub 7 (§ 1223(2)).
- (7) No gain or loss will be recognized by Distributing upon the deemed receipt of Distributing voting stock solely in exchange for Sub 7 stock under (§ 354 (a)(1)).
- (8) Under § 381(a) and § 1.381-1, the taxable year of Sub 7 will end on the effective date of the closing of the Sub 7 Conversion, and Distributing will succeed to and take into account the items of Sub 7 described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, and the regulations thereunder.

#### The Sub 8 Conversion

- (9) The deemed transfer by Sub 8 of substantially all of its assets to Distributing in the Sub 8 Conversion solely in exchange for Distributing voting stock and the assumption of the liabilities of Sub 8, followed by the distribution by Sub 8 of the Distributing voting stock to Distributing in complete liquidation, will qualify as a reorganization under § 368(a)(1)(C). Sub 8 and Distributing will each be a “party to a reorganization” within the meaning of § 368(b).
- (10) No gain or loss will be recognized by Sub 8 on the deemed transfer of substantially all of its assets to Distributing solely in exchange for shares of Distributing voting stock and the deemed assumption by Distributing of the liabilities of Sub 8 (§§ 361(a) and 357(a)).
- (11) No gain or loss will be recognized by Sub 8 on the deemed distribution of Distributing voting stock to Distributing under (§ 361(c)).
- (12) No gain or loss will be recognized by Distributing upon the deemed receipt of the assets of Sub 8 solely in exchange for Distributing voting stock (§ 1032(a)).
- (13) The basis of the assets of Sub 8 in the hands of Distributing will be the same as the basis of those assets in the hands of Sub 8 immediately prior to the Sub 8 Conversion (§ 362(b)).
- (14) The holding period of the assets of Sub 8 in the hands of Distributing will include the period during which those assets were held by Sub 8 (§ 1223(2)).

- (15) No gain or loss will be recognized by Distributing upon the deemed receipt of Distributing voting stock solely in exchange for Sub 8 stock (§ 354(a)(1)).
- (16) Under § 381(a) and § 1.381-1, the taxable year of Sub 8 will end on the effective date of the closing of the Sub 8 Conversion, and Distributing will succeed to and take into account the items of Sub 8 described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, and the regulations thereunder.

#### Contribution 1 and Distribution 1

- (17) Contribution 1 together with Distribution 1 will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” within the meaning of § 368(b).
- (18) Distributing will not recognize any gain or loss upon the transfer of assets to Controlled pursuant to Contribution 1 (§ 361(a)).
- (19) Controlled will not recognize any gain or loss upon the receipt of assets from Distributing pursuant to Contribution 1 (§ 1032(a)).
- (20) Controlled's basis in each asset received from Distributing pursuant to Contribution 1 will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- (21) Controlled's holding period in each asset received from Distributing pursuant to Contribution 1 will include the period during which Distributing held that asset (§ 1223(2)).
- (22) Distributing will not recognize any gain or loss upon the distribution of Controlled stock in Distribution 1 (§ 361(c)).
- (23) Parent will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of shares of Controlled stock in Distribution 1 (§ 355(a)(1)).
- (24) The aggregate basis of the Distributing stock and the Controlled stock in the hands of Parent immediately after Distribution 1 will be the same as Parent's aggregate basis in the Distributing stock held immediately before Distribution 1, allocated in the manner described in § 1.358-2, in accordance with § 358(a) through (c).
- (25) The holding period of the Controlled stock received by Parent in Distribution 1 will include the holding period of the Distributing stock with respect to which Distribution 1 was made, provided that the Distributing stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).



- (26) Earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with § 1.312-10.

The Sub 1 Merger

- (27) As a result of the Sub 1 Merger, Controlled 2's deemed acquisition of substantially all of Sub 1's assets in exchange solely for Controlled 2 stock will be treated as a reorganization within the meaning of § 368(a)(1)(A). Controlled 2 and Sub 1 will each be a "party to a reorganization" within the meaning of § 368(b).
- (28) No gain or loss will be recognized by Sub 1 upon the deemed transfer of all its assets to Controlled 2 in exchange for Controlled 2 stock and the assumption by Controlled 2 of Sub 1's liabilities (§§ 361(a), 357(a) and § 1.1502-80).
- (29) No gain or loss will be recognized by Controlled 2 upon its receipt of Sub 1's assets (§ 1032(a)).
- (30) The basis of each asset of Sub 1 in the hands of Controlled 2 will be the same as the basis of that asset in the hands of Sub 1 immediately prior to its transfer (§ 362(b)).
- (31) The holding period of each asset of Sub 1 in the hands of Controlled 2 will be the same as the holding period of that asset in the hands of Sub 1 (§ 1223(2)).
- (32) No gain or loss will be recognized on the deemed distribution of Controlled 2 stock to Parent (§ 361(c)(1)).
- (33) No gain or loss will be recognized by Parent upon its deemed exchange of Sub 1 stock for Controlled 2 stock (§ 354(a)(1)).
- (34) The basis of the Controlled 2 stock deemed received by Parent will be the same as the basis of the Sub 1 stock exchanged by Parent (§ 358(a)).

Controlled Merger

- (35) As a result of the Controlled Merger, Controlled 2's deemed acquisition of substantially all of Controlled's assets in exchange solely for Controlled 2 stock will be treated as a reorganization within the meaning of § 368(a)(1)(A). Controlled 2 and Controlled will each be a "party to a reorganization" within the meaning of § 368(b).
- (36) No gain or loss will be recognized by Controlled upon the deemed transfer of all its assets to Controlled 2 in exchange for Controlled 2 stock and the assumption by Controlled 2 of Controlled's liabilities (§§ 361(a), 357(a) and § 1.1502-80).

- (37) No gain or loss will be recognized by Controlled 2 upon its receipt of Controlled's assets (§ 1032(a)).
- (38) The basis of each asset of Controlled in the hands of Controlled 2 will be the same as the basis of that asset in the hands of Controlled immediately prior to its transfer (§ 362(b)).
- (39) The holding period of each asset of Controlled in the hands of Controlled 2 will be the same as the holding period of that asset in the hands of Controlled (§ 1223(2)).
- (40) No gain or loss will be recognized on the deemed distribution of the Controlled 2 stock to Parent (§ 361(c)(1)).
- (41) No gain or loss will be recognized by Parent upon its deemed exchange of Controlled stock for Controlled 2 stock (§ 354(a)(1)).
- (42) The basis of the Controlled 2 stock deemed received by Parent will be the same as the basis of the Controlled stock exchanged by Parent (§ 358(a)).

#### Contribution 2 and Distribution 4

- (43) Contribution 2 together with Distribution 4 will qualify as a reorganization within the meaning of § 368(a)(1)(D). Parent and Controlled 2 each will be “a party to a reorganization” within the meaning of § 368(b).
- (44) Parent will not recognize any gain or loss upon the transfer of assets to Controlled 2 pursuant to Contribution 2 (§ 361(a)).
- (45) Controlled 2 will not recognize any gain or loss upon the receipt of assets from Parent pursuant to Contribution 2 (§ 1032(a)).
- (46) Controlled 2's basis in each asset received from Parent pursuant to Contribution 2 will be the same as the basis of that asset in the hands of Parent immediately before its transfer (§ 362(b)).
- (47) Controlled 2's holding period in each asset received from Parent pursuant to Contribution 2 will include the period during which Parent held that asset (§ 1223(2)).
- (48) Parent will not recognize any gain or loss upon the distribution of Controlled 2 stock in Distribution 4 (§ 361(c)).
- (49) The shareholders of Parent will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of shares of Controlled 2 stock in Distribution 4 (§ 355(a)(1)).

- (50) The aggregate basis of the Parent stock and the Controlled 2 stock in the hands of the Parent shareholders immediately after Distribution 4 will be the same as the Parent shareholders' aggregate basis in the Parent stock held immediately before Distribution 4, allocated in the manner described in § 1.358-2, in accordance with § 358(a) through (c).
- (51) The holding period of the Controlled 2 stock received by the Parent shareholders in Distribution 4 will include the holding period of the Parent stock with respect to which Distribution 4 was made, provided that the Parent stock is held as a capital asset on the date of Distribution 4 (§ 1223(1)).
- (52) Earnings and profits of Parent, if any, will be allocated between Parent and Controlled 2 in accordance with § 1.312-10.
- (53) The payment of cash in lieu of any fractional shares of Parent, if any, will be treated for U.S. federal income tax purposes as if the fractional shares were distributed as part of Distribution 4 and then sold by the Parent shareholders. The cash payments will be treated as having been received in exchange for the fractional Parent shares sold. Any gain or loss will be treated as capital gain or loss, provided that such fractional shares are held as capital assets on the date of Distribution 4.

### **Caveats**

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, we express no opinion regarding: (i) whether either of Distribution 1 or Distribution 4 satisfies the business purpose requirement of § 1.355-2(b); (ii) whether either of Distribution 1 or Distribution 4 is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether either of Distribution 1 or Distribution 4 and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and, whether any transactions between Distributing and Controlled or Controlled 2 are not for fair market value under the Transition Services Agreement or the Sublease Agreements.

**Procedural Matters**

This ruling letter is directed only to the taxpayers who requested it. See § 6110(k)(3), which provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)